

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

WILLIAM M. SCHMALFELDT, SR.,

Plaintiff,

v.

Case No. 15-CV-1516

**ERIC P. JOHNSON, SARAH PALMER,
and JOHN AND JANE DOES,**

Defendants.

DECISION AND ORDER

Plaintiff William M. Schmalfeldt, Sr. filed this diversity action on December 18, 2015 alleging, among other things, that the defendants had committed libel and slander against him. (Docket # 1.) In the roughly three and a half months this case has been pending, there have been 35 docket entries—10 of which are pending motions. Among the non-motion filings is an amended complaint, which Schmalfeldt filed on February 4, 2016. (Docket # 6.) Under the Federal Rules of Civil Procedure, a party may amend his complaint as a matter of course within 21 days of serving or, if the pleading is one to which a responsive pleading is required, within 21 days of service of that responsive pleading. Fed. R. Civ. P. 15(a). At the time Schmalfeldt filed his amended complaint, neither of these conditions were present. Therefore, Schmalfeldt needed either the defendants' written consent or leave of court to file the amended complaint. Fed. R. Civ. P. 15(a)(2). Schmalfeldt did neither of these things.

Therefore, the question before me is whether to allow Schmalfeldt's amended complaint to become the operative complaint in this case. Given the state of the docket, particularly that deciding the defendants' motion to dismiss cannot be done until this issue is resolved, and in the interests of

efficiency and expediency, I will allow Schmalfeldt to file the amended complaint. It will therefore become the operative complaint and fully replaces the original complaint. *See Duda v. Board of Educ. of Franklin Park Public School Dist. No. 84*, 133 F.3d 1054, 1057 (7th Cir. 1998). I also note that while I have granted Schmalfeldt some leniency on this issue due in part to his *pro se* status, Schmalfeldt is nonetheless required to comply with the Federal Rules of Civil Procedure and the Local Rules. Going forward, I expect him to adhere to any relevant rules. Finally, in accordance with my order dated March 3, 2016 (Docket # 17), the defendants have 21 days from the date of this order to supplement or amend their motion to dismiss should they wish to do so.

NOW, THEREFORE, IT IS HEREBY ORDERED that leave to amend the complaint is granted. The Amended Complaint (Docket # 6) is now the operative complaint.

IT IS FURTHER ORDERED that the defendants have 21 days from the date of this order to file any supplements to their motion to dismiss or an amended motion to dismiss. If the defendants do file a supplement or amended motion, briefing will proceed pursuant to the Local Rules.

Dated at Milwaukee, Wisconsin this 31st day of March, 2016.

BY THE COURT

s/Nancy Joseph
NANCY JOSEPH
United States Magistrate Judge